

§ 68.19

(2) A party is under a duty to amend timely a prior response if he/she later obtains information upon the basis of which:

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.19 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served on all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons of objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer or objections upon all parties to the proceeding within thirty (30) days after service of the interrogatories, or within such shorter or longer period as the Administrative Law Judge upon motion may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Administrative Law Judge may upon motion order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) A person or entity upon whom interrogatories are served may respond

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by the submission of business records, indicating to which interrogatory the documents respond, if they are sufficient to answer said interrogatories.

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§ 68.20 Production of documents, things, and inspection of land.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated documents or things or to inspect land, in the possession, custody, or control of the party upon whom the request is served; and

(2) Permit the party making the request, or a person acting on his/her behalf, to enter the premises of the party upon whom the request is served to accomplish the purposes stated in paragraph (1) of this section.

(b) The request may be served on any party without leave of the Administrative Law Judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.21 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action

only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable the party to admit or deny.

(d) Any matter admitted under this section is conclusively established unless the Administrative Law Judge upon motion permits withdrawal or amendment of the admission.

(e) A copy of each request for admission and each written response shall be served on all parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.22 Depositions.

(a) *When, how and by whom taken.* Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. All costs involved with the taking of depositions, including the cost of a certified court reporter and the original transcripts, shall be paid by the party seeking the depositions.

(b) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and all other parties of the time and place of

the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less than twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(c) *Taking and receiving in evidence.* Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, certified by the person administering the oath, read by or to, and subscribed by the witness unless the witness and the parties by stipulation waive such signature.

(d) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his/her objections to the deposition conduct or proceedings.

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§ 68.23 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§ 68.18 through 68.22, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. A party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections